
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

KEITH RUSSELL JUDD,

Petitioner,

versus

MARQUES MARTIN, *et al.*,

Respondents.

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CIVIL ACTION NO. 1:08-CV-174

MEMORANDUM OPINION AND ORDER

Petitioner Keith Russell Judd, a federal prisoner, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is attempting to challenge the validity of a state court criminal conviction from Bernalillo County, New Mexico. Petitioner complains of the proceedings following his conviction in 1998 and contends that the state court did not properly file his notice of appeal.

On April 3, 2008, the magistrate judge to whom this case was referred entered an order transferring this petition to the United States District Court for the District of New Mexico.

Petitioner filed a notice of appeal to the district judge. This memorandum opinion considers such motion.

ANALYSIS

In accordance with 28 U.S.C. § 636(b)(1)(A), a judge of the court may reconsider any pretrial matter referred to a magistrate judge under subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

As the magistrate judge correctly determined, the interest of justice will best be served if this petition is transferred to the court in the district in which petitioner was convicted, the District

of New Mexico, because all records and witnesses involved in this action are located in New Mexico.

If petitioner's requests for this court to compel the New Mexico courts to process his appeal are construed as a petition for writ of mandamus, there is no jurisdiction for such action. This court lacks jurisdiction over a state court in New Mexico because such court is not within the jurisdictional boundaries of this court. In addition, Title 28 U.S.C. § 1361 grants no jurisdiction to district courts to dictate action by state courts or state employees in a mandamus action. *See Moya v. Clerk, Dekalb County Sup. Ct.*, 474 F.2d 1275, 1275-76 (5th Cir. 1973) (holding that the federal courts lack “the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought”); *Mahogany v. Muwwakkil*, 2007 WL 4461364, at *1 (5th Cir. 2007) (unpublished).

After careful consideration, the court is of the opinion that petitioner's objections lack merit and should be overruled. The court finds the order of the magistrate judge neither clearly erroneous nor contrary to law.

ORDER

For the reasons set forth above, petitioner's appeal of the magistrate judge's transfer order should be denied. It is therefore

ORDERED that petitioner's objections are **OVERRULED** and petitioner's appeal of the magistrate judge's order is **DISMISSED**. It is further

ORDERED that the Clerk shall **TRANSFER** this petition for writ of habeas corpus to the Clerk of the United States District Court for the District of New Mexico. The petition is **DISMISSED** in all other respects.

SIGNED at Beaumont, Texas, this 17th day of April, 2008.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive style with a large, stylized "M" and "C".

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE